

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 28, 2009

RICHARD LYNN NORTON v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Greene County
No. 08CR349 John F. Dugger, Judge**

No. E2009-00859-CCA-R3-PC - Filed January 13, 2010

The pro se Petitioner, Richard Lynn Norton, appeals as of right from the Greene County Criminal Court's summary dismissal of his petition for post-conviction relief attacking his 1999 convictions for three counts of selling or delivering a schedule II controlled substance. Following our review, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Case Dismissed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Richard Lynn Norton, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Senior Counsel; C. Berkeley Bell, District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the Petitioner was convicted of three counts of sale of .5 grams or more of crack cocaine and received an effective sentence of thirty-six years. On appeal to this court, we affirmed the convictions but modified the effective sentence to twenty-four years. State v. Richard Lynn Norton, No. E1999-00878-CCA-R3-CD, 2000 WL 185384 (Tenn. Crim. App. Aug. 22, 2000), app. denied (Tenn. Apr. 16, 2001). The Petitioner then filed a timely petition for post-conviction relief alleging that his trial counsel had committed ineffective assistance. The post-conviction court denied relief and this court affirmed the denial. Richard Lynn Norton v. State, No. E2002-00305-CCA-R3-PC, 2003 WL 252619 (Tenn. Crim. App. Feb. 5, 2003), app. denied (Tenn. July 7, 2003). Also notable, the record

reflects that the Petitioner has instituted a prolific history of collateral litigation in both the state and federal courts to no avail.

On October 16, 2008, the Petitioner filed a subsequent petition for post-conviction relief. On the portion of the form petition listing grounds for relief, the Petitioner failed to list any grounds. However, the addendum to the petition appears to be a rather lengthy recapitulation of previous claims, including those claims related to the ineffective assistance of counsel. On December 22, 2008, the post-conviction court summarily dismissed the petition citing as its basis the Petitioner's failure to verify the petition under oath as required by Tennessee Code Annotated section 40-30-104(e) and the statutory mandate that all subsequent petitions are subject to summary dismissal pursuant to Tennessee Code Annotated section 40-30-102(c).

Instead of filing a notice of appeal from the post-conviction court's summary dismissal, the Petitioner filed yet another petition for post-conviction relief on January 13, 2009; this petition was identical to the first filing yet verified under oath and asked the post-conviction court to set aside its previous summary dismissal order. On January 16, 2009, the post-conviction court again summarily dismissed the petition as a subsequent petition subject to summary dismissal pursuant to Tennessee Code Annotated section 40-30-102(c).

Subsequent pleadings filed by the Petitioner in this case indicate that he mailed a notice of appeal to the Greene County Circuit Court Clerk on January 20, 2009; however, there is no such filing found in the record before this court. The subsequent pleadings also sought clarification or amendment to the post-conviction court's summary dismissal orders. On April 13, 2009, the post-conviction court dismissed the Petitioner's subsequent pleadings as frivolous. The post-conviction court further ordered the court clerk, in light of the Petitioner's prolific history of filing frivolous actions, not to accept further filings from the Petitioner unless he advanced costs for the filings. Although the Petitioner attached as an addendum to one of his pleadings the notice of appeal he purportedly filed on January 20, 2009, there exists no evidence in the record before this court that any such pleading was ever filed, timely or otherwise. Indeed this court's records reveal that a notice of appeal was filed in this court on March 23, 2009, but the record also notes that this court did not receive a file-stamped copy from the post-conviction court. Further, the Petitioner failed to seek leave of this court to accept a late-filed notice of appeal.

On appeal, the Petitioner urges this court to review his claims on the merits, claiming that he has never received review on the merits in any other proceedings related to direct or collateral attacks on these convictions. For the Petitioner's clarification, we note that all his claims appear to have been previously determined or waived; therefore they are not appropriate for any consideration pursuant to the Post-Conviction Procedure Act. Tenn. Code Ann. § 40-30-106(f).

The State also urges this court to dismiss the appeal by treating it as an untimely appeal from a denial of a motion to re-open a post-conviction petition. See Tenn. Code Ann. § 40-30-117(c). However, because the post-conviction court did not consider this action as a motion to re-open post-conviction proceedings and instead summarily dismissed the petition as a subsequent petition, which was statutorily appropriate, it is unnecessary for this court to address the jurisdiction of this appeal under that analysis.

Nevertheless, this court concludes that the appeal should be dismissed for lack of jurisdiction due to the Petitioner's failure to file a timely notice of appeal in the post-conviction court and subsequent failure to seek late-filing of the notice of appeal in this court. Under the circumstances presented in this case, this conclude that the interests of justice do not require this court to waive the timely filing of the notice of appeal. Tenn. R. App. P. 4(a). Thus, this court is without jurisdiction to consider the appeal, and the appeal is dismissed.

CONCLUSION

In consideration of the foregoing and the record as a whole, the appeal is dismissed.

D. KELLY THOMAS, JR., JUDGE